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STANDARD FORM NO. 64

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Office Memorandum • UNITED STATES GOVERNMENT

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TO : Ambassador Donnelly
Ambassador Pawley

DATE: May 27, 1954

FROM : ARA - Mr. Holland

SUBJECT:

Attached hereto are two memoranda from the Legal Adviser.

They indicate that we may now have plenty of legal authority to justify the President in prohibiting United States nationals and property from being used in traffic with Guatemala.

Likewise, action by the OAS might suffice to take care of any complaint by an American State regarding our detaining shipping entering and leaving that country.

However, there seems to be no legal authority under which we could detain, say, a Soviet ship, or any other European or Asian ship, whether or not the OAS had authorized the step.

The only legal authority that I see for such an action would be Article 51 of the Charter of the United Nations which preserves the right of individual self-defense in the event of armed attack.

I would be grateful if you would advise me whether you come to the same conclusion from an examination of the attached memoranda.

Attachment:
2 memorandum from L:
5/20/54 to Mr. Holland from Mr. English
re Interference with Shipping to Guatemala.
5/24/54 Memorandum "Authority to Prevent (I) Arms from Reaching an American State, and (II) to Prevent Travel Between Countries of Agents of International Communism.

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DEPARTMENT OF STATE

THE LEGAL ADVISER

May 20, 1954

TO: ARA - Mr. Holland

FROM: L - Mr. English

SUBJECT: Interference with Shipping to Guatemala

You have asked the views of this office on certain questions regarding the current shipment to Guatemalan ports of cargoes which may contain munitions. It is understood that one Swedish ship is now unloading in a Guatemalan port, and that two other ships (which may be of Finnish registry) are expected to call at Guatemalan ports in the near future. You have inquired whether United States naval interception of such shipping, either on the high seas or in the territorial waters of Guatemala, would present problems under the United Nations Charter or under the Rio Treaty. It is understood that the interception referred to above would be followed by the taking of the ships in question to United States ports.

Under Article 3 of the Rio Treaty, a party to that Treaty is authorized to give assistance to an American state, at its request, if that state is the victim of an armed attack. Such assistance could include measures such as interception of shipping to the state which was committing the armed attack. The lawfulness of such assistance is also recognized by Article 51 of the Charter of the United Nations, in similar circumstances.

In the absence of an armed attack, measures such as interception (involving the use of force) could not be justified either under the Rio Treaty or under the United Nations Charter. On the facts now known to this office, there appears to be no basis for concluding that any nation is committing an armed attack against any American state. Guatemala apparently is not committing armed attack against any of its neighbors. Sweden and Finland are not committing armed attack against any American state.

In these circumstances, if the United States were to intercept and escort by force any ships in Guatemalan territorial waters or on the high seas to an American port, there would be no legal justification for such action either under the Rio Treaty or under the United Nations Charter. Such action would constitute a violation of international law,

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and could be considered an act of war by the countries whose ships were intercepted, and by Guatemala (at least if the interception occurred in that country's territorial waters). Article 6 of the Rio Treaty provides for consultation among the American states in the circumstances described by that Article. The facts known concerning the situation in Guatemala appear to fall within the scope of Article 6. However, it would not seem that any decisions taken by the American states under Article 6 would authorize measures involving the use of force, such as forcible interception of shipping. This results from the fact that Article 53 of the Charter of the United Nations contains the following provisions:

> "The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council".

The exception to this last provision would not be applicable in the present situation. It should be noted in connection with Article 53 of the Charter and Article 6 of the Rio Treaty that Article 103 of the United Nations Charter provides as follows:

> "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."

Chapter VII of the United Nations Charter provides for action by the Security Council to deal with "any threat to the peace, breach of the peace, or act of aggression". If, as a political matter, Security Council action could be obtained, Chapter VII of the Charter would provide a basis for measures to be taken in the Guatemalan situation, including measures involving the use of force such as the forcible interception of shipping. Under Chapter IV of the Charter, the General Assembly is given certain powers with respect to the maintenance or restoration of peace and security. By virtue of these powers, and in pursuance of the 1950 General Assembly Resolution entitled "Uniting for Peace", the Assembly would be authorized to recommend collective measures in a situation where a threat to peace or act of aggression occurred. Such measures could include the use of force. It is believed that a Member of the United Nations would be justified under international law in taking measures which involve the use of force if such measures had been recommended by the General Assembly.

In the absence of an "armed attack", the provisions of Article 6 and Article 8 of the Rio Treaty afford a basis for collective action which does not involve the use of force. Such action could include political and economic sanctions.

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DEPARTMENT OF STATE

THE LEGAL ADVISER

MEMORANDUM

May 24, 1954

AUTHORITY TO PREVENT (I) ARMS FROM REACHING AN AMERICAN STATE, AND (II) TO PREVENT TRAVEL BETWEEN COUNTRIES OF AGENTS OF INTERNATIONAL COMMUNISM.

I

On the hypothesis that the Organ of Consultation of the OAS should find that shipments of arms directly or indirectly from countries in the Soviet bloc to the American States constitute a threat to the security of the American States and the peace of the Continent, and should make a recommendation or decision that the American States should individually or collectively take such steps as may be required to prevent arms or armaments sent directly or indirectly from countries in the Soviet bloc reaching the territory of an American State, question would arise as to the authority of the United States to take such preventive action.

The President is now authorized in a "period of national emergency" to prevent, inter alia, "transactions" with any foreign country or national thereof "by any person, or [underscoring added] with respect to any property, subject to the jurisdiction of the United States" in which any foreign country or a national thereof has any interest. (Trading with the Enemy Act, Title 50 U.S.C., App. 5 (b).)

Accordingly, under the authority just referred to, the President could by regulation issued pursuant thereto, prohibit all transactions by any person, whether national or alien, subject to the jurisdiction of the United States, from engaging in any transaction, including banking or other credit transactions, involving the sale or supply of arms or armaments, or munitions of war, intended to be sent directly or indirectly to the territory of an American State so designated. Similarly, he could prevent transactions in respect of arms, armaments, or munitions of war, within the jurisdiction

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of the United States, from being completed. Violation of these provisions is subject to fine of not more than $10,000 or imprisonment for not more than ten years, or both.

Should a ship or plane, carrying arms, armaments, or munitions of war, come within the jurisdiction of the United States, in transit, or otherwise, the United States could block or vest the property under the authority of the same law.

Since the use of ports and other facilities by ships or planes involve transactions, such use can also be prohibited under authority of existing law.

The term "United States" as used in the Trading with the Enemy Act includes the United States "and any place subject to the jurisdiction thereof."

United States owners of ships, flying the American flag, could not engage in transactions with charterers for such carriage of arms, armaments, or munitions of war, and United States charterers could not engage to carry arms on an American vessel or other vessel bound directly or indirectly for the American State named.

Likewise, United States owners, charterers, or insurers of vessels be they located in the United States or outside, and be they corporate or natural, are subject to the provisions of this law and regulations issued thereunder.

Section 191 of Title 50, U.S.C., authorizes the Secretary of the Treasury, "whenever the President by proclamation or Executive order declares a national emergency to exist by reason of . . . disturbance or threatened disturbance of the international relations of the United States", to "make . . . rules and regulations governing the anchorage and movement of any vessel, foreign or domestic, in the territorial waters of the United States". Within the territory and waters of the Canal Zone, the Governor of the Panama Canal, with the approval of the President, is authorized to exercise all the powers conferred by this section on the Secretary of the Treasury.

Authority also exists for the President "to prohibit or curtail the exportation of any articles, technical data, materials, or supplies" except under regulation. (Title 50 Appx., Sec. 701.)

Another

Another phase of the preventive action envisaged has to do with prevention of shipments of arms, armaments, or munitions of war, whether by sea or air, presumably, originating in Soviet bloc countries from reaching territory of an American State, when the transaction does not involve any American or American financial instruments or property.

In order to prevent such shipments it would doubtless be necessary to institute a blockade, a blockade wherein the purpose was not to prevent ingress or egress of ships of the coastal State only.

There is at present no authority of law for interfering with, detaining, examining, taking into port, or seizing foreign vessels or planes found outside the territorial waters of the United States, carrying cargoes of arms, armaments, or munitions of war, from Soviet bloc countries to an American State. The United States would have such authority if it declared itself a belligerent either vis-a-vis Guatemala or the country whose vessels are seized. Enactment of domestic legislation could only purport to legalize the seizures, etc., from a domestic standpoint.

II

On the hypothesis that the Organ of Consultation of the OAS should determine that the travel of agents of the international communist movement, or of those who act in its behalf, is contrary to the security interests of all the American States, and should recommend or decide that States individually or collectively take such steps as may be necessary to prevent the travel between countries of the agents of international communism, or those who act in its behalf, question would arise as to the authority of the United States under existing law to implement the recommendation or decision.

There is legislation to bar from admission into the United States:

> "(c) Aliens who are members of or affiliated with (i) the Communist Party of the United States, (ii) any other totalitarian party of the United States, (iii) the Communist
>
> Political

Political Association, (iv) the Communist or any other totalitarian party of any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state, (v) any section, subsidiary, branch, affiliate, or subdivision of any such association or party, or (vi) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt: Provided, That nothing in this paragraph, or in any other provision of this Act, shall be construed as declaring that the Communist Party does not advocate the overthrow of the Government of the United States by force, violence, or other unconstitutional means;"
(Section 212(a)(28) of the Immigration and Nationality Act, Pub. L. 414, 82d Cong.; 66 Stat. 185; 8 USC 1182.)

Further, the President is authorized to impose additional restrictions in time of war or national emergency upon the departure of persons from and their entry into the United States. (Sec. 215 of the Immigration and Nationality Act, ibid.)

Section 6 of the Internal Security Act of 1950 makes it a penal offense for a member of a Communist organization which has either registered or been ordered to register under the Act to apply for a passport or to attempt to use a passport. It also makes it unlawful for any officer or employee of the United States to issue a passport or to renew the passport of any such person knowing or having reason to believe that he is a member of such an organization. (63 Stat. 993; 50 U.S.C. 785.)

There is presently existing authority to require a passport for travel to Guatemala.

L/ARA:HWhiteman:lbd
5/24/54